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Legislative & Regulatory Counsel, NSA

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David,

Here is a copy of Moynihan's testimony.

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STATEMENT BY SENATOR MOYNIHAN ON SOVIET ELECTRONIC EAVESDROPPING

Before the Subcommittee on Investigations, Committee on Govermental Affairs, December 3, 1985

10:00, Dirksen 342

In 1975 when I was named U.S. ambassador to the United Nations, Nelson Rockefeller, then Vice President, told me the first thing I must know about the U.N. is that the Soviets would be listening to every telephone call I made from our Mission or from our suite in the Waldorf Towers. I would soon learn that the Soviets have the same electronic listening capabilities at their consulate in San Francisco and Embassy in Washington.

Nelson Rockefeller had reported this intelligence breach, and violation of the Fourth Amendment, to the President in January 1975. In a report to the President in his capacity as chairman of The Commission on CIA Activities Rockefeller said "the communist countries appear to have developed electronic collection of intelligence to an extraordinary degree of technology and sophistication for use in the United States and elsewhere ... and we believe that these countries can monitor and record thousands of private telephone conversations. Americans have a right to be uneasy if not seriously disturbed at the real possibility that their personal and business activities which they discuss freely over the telephone could be recorded and analyzed by agents of foreign powers." Nelson Rockefeller was on to something.

Later when Arkady Shevchenko, Under Secretary General of the United Nations and the ranking Russian at the U.N., defected, we were to learn just how extensive the Soviet

eavesdropping effort was. In his book Breaking with Moscow Shevchenko writes, "When I first came to the United States in 1958, there were three or four KGB communications technicians and their gear sharing the former servants' quarters in the attic [at Glen Cove]. By 1973, the specialists in intercepting radio signals numbered at least a dozen, and they had taken over the whole floor.... The rooftops at Glen Cove, the apartment building in Riverdale, and the mission all bristled with antennas for listening to American conversations."

Soviet and Eastern bloc signal intelligence operations continued to expand. Towards the end of 1981 Theodore Gardner, Special Agent in charge of the FBI's Washington field office,estimated that 40 percent of the Russian embassy personnel were occupied with eavesdropping.

There are three principal modes of communication at risk: microwave transmission; satellite transmission; and mobile telephone transmission. The Soviets have the potential to have at all. A Motorola brochure is quick to point out that "today, 90 percent of America's long distance phone calls travel all, or part of the way, by microwave or satellite transmission paths. These paths are easily intercepted." This is accomplished from the Soviet diplomatic missions in New York City, their consulate in San Francisco, and Washington Embassy, soon to be located on Mt. Alto, one of the highest points in Washington and an ideal communications vantage point. In addition, the Defense Department informs us, a signal intelligence facility at the Lourdes complex in Cuba targets U.S. commercial satellites; and

what of those Russian trawlers? Fishing indeed, but fishing for what?

A recent article in Newsweek indicated just what might be at risk. As the President ordered the Secretary of Defense to proceed with the interception of the aircraft carrying the Achille Lauro hijackers, he did so "in the clear." Newsweek reports, "Ironically, while U.S. intelligence was closely monitoring communications from Egypt, the scrambler aboard Air Force One was broken, and Reagan was forced to make his call 'in the clear.' As a result the conversation with Weinberger was overheard by a ham radio operator...." Are we to assume the Soviets or their surrogates were not also listening? And what of the Soviet acquisition of western technology which, no doubt, is enhanced by telephone intercept.

And in all this we can not forget the private citizen whose Fourth Amendment rights are being violated. The Amendment bears repeating, "The right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures, shall not be violated..." It is my understanding that this would protect our citizens from Soviet intercept of their telephone conversations. And yet, at a hearing of the Select Committee on Intelligence, of which I was a member on July 27, 1977, Mr. Anthony Lapham, General Counsel of the Central Intelligence Agency, replied to my question on the point, "As much as we would like to think that the Fourth Amendment applies to the Soviet Union, I do not think the

Constitution supports you on that." I wonder if my colleagues on the subcommittee feel that is a sufficient answer?

To use Nelson Rockefeller's words, Americans are uneasy -- my receptionists and mail clerks will attest to that. And I am seriously disturbed. Consequently, on the first day of the 99th Congress I introduced a bill, S.12, the Foreign Surveillance Prevention Act of 1985. (I introduced similar legislation in previous Congresses, in July 1977, and again in November 1981.) This legislation would require the President, upon learning of illegal electronic surveillance by a foreign mission, to demand that it be discontinued and, failing that, declare the diplomats involved persona non grata and expel them.

In June of this year I offered the bill as an amendment to the Department of State Authorization Act. The managers accepted it and it became Title VII of that measure which thereupon went to conference with the House. But the administration intervened, and Title VII was dropped. Subsequently, I offerd an amendment to the State, Commerce, Justice, and Judiciary appropriations bill. This amendment earmarked $1 million for the purpose of countering the interception of domestic American telecommunications by agents of the Soviet Union and its allies and provided that by June 1, 1986, the Director of the FBI shall submit to the appropriate committees of Congress a report on the FBI's capabilities and efforts to counter electronic interception of American telecommunications by foreign agents. That this amendment passed by a vote of 96-1 indicates Congressional concern. But I

will be the first to acknowledge that this $1 million adresses the issue but does not resolve it. I think I can speak for the 16 cosponsors of S. 12; there is still more to be done and we intend to do it.

As I have said before, and no doubt will say again, our countermeasures to date have been essentially defensive in nature, expensive and slow to take effect. The Carter administration decided to bury the Federal Goverment's telephone lines and those of some its defense contractors. Unfortunately, this left the rest of us still relatively defenseless. In addition, in March of this year the Department of Defense awarded development contracts for a new generation of secure telephone known as the Secure Telephone Unit-III (STU-III). With a projected circulation of as many as 500,000, as reported in the New York Times, the STU-III will certainly improve secure telephone communications over the 4,000 STU-IIs currently in use. At a target price of $2,000 per unit, these telephones will be deliverable in April 1987. The goverment, defense contractors, and unique to the communication security business, as a GAO study indicated, the commercial market will all benefit. But still, this leaves the Fourth Amendment out in the cold.

More recently, on November 7, Secretary of State Shultz published in the Federal Register Public Notice 947 authorizing the Office of Foreign Missions "to require a foreign mission to obtain certain benefits exclusively from and through the Director [Office of Foreign Missions] under such terms and

conditions as may be established." The notice then specifically targets as benefits any parabolic dish antennaes or comparable apparatus and any long distance telephone service. It should come as no surprise to any of my colleagues, that parabolic dish antennaes can both receive and send microwave signals to and from satellites; an asset to any signal intelligence listening effort as well as a boon to those who want to watch Mets games on cable T.V. Here is a measure we all can commend, private citizen as well as govermment official. Still it is not enough.

I will close my statement by returning once again to a comment Walter Deeley, the head of Communications Securtiy at the National Security Agency, made to James Burnham reported in the New York Times on October 7, 1984, "They are having us for breakfast. We are hemorrhaging. Your progeny may not enjoy the same rights we do today if we don't do something."